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(2075)

Supreme Court of the United States

No. 171 October Term, 1965

VILLAGE OF PORT CHESTER,

Petitioner,

against

M. P. CATHERWOOD, as Industrial Commissioner of the State of New York, etc.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

BRIEF IN OPPOSITION TO PETITION

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BATAVIA TIMES, LAW PRINTERS,
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Supreme Court of the United States

No. 1198—October Term, 1964

VILLAGE OF PORT CHESTER,

Petitioner,

against

M. P. CATHERWOOD, as Industrial Commissioner of the State of New York, etc.,

Respondent.

BRIEF IN OPPOSITION TO PETITION

(1)

The petition is filed on behalf of a municipal subdivision of the State of New York, and asserts that the prevailing rate of wage statute of that State (Labor Law, § 220) as construed by respondent has deprived it of property without due process of law.

The petition should be denied upon the authority of *Trenton* v. *New Jersey*, 262 U. S. 182, and *Newark* v. *New Jersey*, 262 U. S. 192. The authority of these cases has never been impaired by subsequent decisions in such a way as to aid the petitioner. See *Gomillion* v. *Lightfoot*, 364 U. S. 339, 343. Recent State cases have construed the *Trenton* and *Newark* cases as holding that none of the restraints upon the states stemming from the Fourteenth Amendment is applicable to municipalities. *Monaghan* v. *Armatage*, 218 Minn. 108, 15 N. W. 2d 241, 243, app. dis. 323 U. S. 681; *Wright* v. *Village of South Orange*, 79 N. J. Super. 96, 190 Atl. 2d 675, 678-679; *Marshfield* v. *Cameron*, 24 Wis. 2d 56, 127 N. W. 2d 809, 813.

(2)

No question under the U. S. Constitution was raised in the petitioner's brief in the Appellate Division, Third Department. The five headnotes in that brief are set forth in an Appendix, *infra*, for the information of the Court.

In seeking leave to appeal to the Court of Appeals of the State of New York, the petitioner did not go beyond saying (Motion Papers, p. 38):

> "This four-year delay was not only in making determination but also in giving notice of filing as mandated by the statute. Surely that fundamental requirement of due process was not 'merely directory' (35), or its disregard a ground for *retroactively* mulcting the Village for a four-year period during which it had known nothing about the complaints."

This is clearly inadequate to bring a federal question before this Court. *Daniman* v. *Board of Education*, 348 U. S. 933.

The petition for certiorari should be denied.

Dated: May 26, 1965.

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Appendix Showing Points Raised by Petitioner in the Court Below.

Point I—Respondent Industrial Commissioner and his predecessors have failed to perform duties enjoined upon them by Section 220, Article 8, of the Labor Law.

Point II—Respondent Industrial Commissioner and his predecessors have proceeded without, and in excess of, their jurisdiction.

Point III—Respondent Industrial Commissioner's determination of prevailing wages was made in violation of lawful procedure and (a) was affected by error of law; (b) was arbitrary and capricious; and (c) constituted an abuse of respondent's discretion.

Point IV—Respondent's determination was made as a result of hearings at which the evidence taken was, on the entire record, not substantial.

Point V—The Report and Recommendations of the Hearing Officer upon which the Industrial Commissioner indiscriminately predicated his Order and Determination is erroneous in material respects.